IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 14 of 2005

For Approval and Signature:
THE HON'BLE MR.JUSTICE A.M.KAPADIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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JESHABHAI UKABHAI BAMANIYA - Petitioner(s)

Versus

PATEL TRIBHOVANDAS KHODIDAS &2 - Respondent(s)

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Appearance :
MR LR PATHAN for Petitioner No(s).: 1.
MR MOHD.HANIF SHAIKH for Petitioner No(s).: 1.
SERVED BY RPAD - (R) for Respondent No(s).: 1.
RULE SERVED for Respondent No(s).: 2.

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CORAM :THE HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 21/06/2005

ORAL JUDGMENT

1. By filing instant petition under Section 115 of the Code of Civil Procedure ('the Code' for short), petitioner/original claimant seeks to challenge the order dated 2.11.2004 recorded below application exh. 26 by the MACT (Aux.) Verawal by which the application filed by the petitioner to set aside the order of deletion of opponent No.1 came to be rejected.

2. Petitioner has filed MACP No. 130 of 2003 under Section 166 of the Motor Vehicle Act ('the Act' for short) to receive compensation of Rs.2 lacs from the opponents, who are Driver, owner and the insurer of the vehicle involved in the accident. Since the petitioner could not serve the summons to opponent No.1, his name has been deleted by the Tribunal and therefore, petitioner applied to set aside the said order with a request that he will serve the opponent No.1. The Tribunal rejected the said application, which has given rise to the present petition.

3. This Court has considered the submissions advanced by Mr. L.R.Pathan, learned advocate of the petitioner, perused the impugned order and the statutory provisions contained under the Act.

4. It is settled principle of Law of Torts that unless the principal tort-feasor is liable, the owner cannot be asked to pay compensation under the principal of vicarious liability and unless the owner is held to pay the compensation, insurer cannot be ordered to indemnify the owner. It appears that the basic principle of Law of Torts has been given go by by the Tribunal. Tribunal has deleted opponent No.1 who is the Driver-cum-owner of the vehicle, therefore, obviously, no award can be passed against the insurer. Therefore, according to this Court, Tribunal has committed grave error in not allowing the application filed by the petitioner wherein the prayer was sought to the effect that the opponent No.1, who stood deleted, may be set aside.

5. In aforesaid view of the matter, the order which is impugned, does not stand to scrutiny, which is deserve to be quashed and set aside by allowing this revision application by granting the prayer made in the application Exh. 26.

6. For the foregoing reasons, the application succeeds and accordingly it is allowed. Order dated 2.11.2004 recorded below application Exh. 26 is quashed and set aside. Application Exh. 26 is allowed. The order dated 2.9.2004 passed by the Tribunal, deleting the opponent No.1 is set aside. Resultantly, opponent No.1 is ordered to be impleaded again on the cause-title of MACP No. 130 of 2003. Rule is made absolute to the aforesaid extent.

(A.M.Kapadia,J)

Jayanti*